

# Negotiations

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## Negotiation is defined as . . .

1. Trying to reach an agreement or compromise by discussion with others
2. Find a way over or through (an obstacle or a difficult path)

# In criminal defense, each negotiation is different

External Factors	Internal Factors
DA	Client's immigration status
Judge	Personal characteristics (age/expunction, prior record)
County in which you practice	Tolerance for risk
	Custody status

# Negotiations Roadmap

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**Before you start**

**Why?**

**Suggestions**

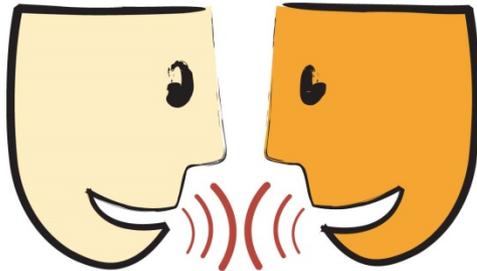
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## Before you start consider . . .

1. Client objectives
2. DA Office policies
3. DA personality
4. Judge

# What are your client's objectives?

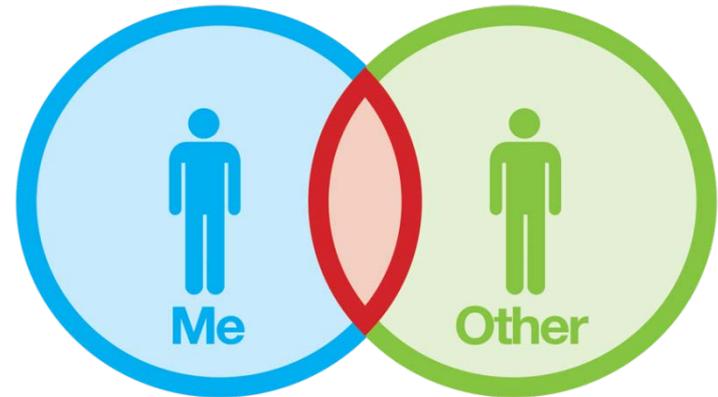
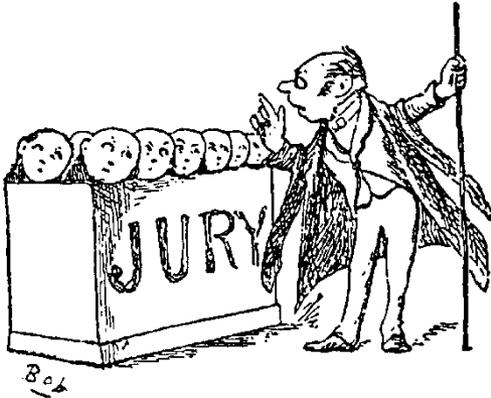
The client ultimately decides if plea offer is acceptable or not. Be sure to:



# What are the DA policies?

- Do they dismiss repeaters?
- Will they reduce felonies to misdemeanors?
- Will they reduce misdemeanors to ordinances?
- Are there certain types of cases that will not be reduced?

# Who is your DA?



# Who is your Judge?

- Does the judge respect plea agreements?
- Will you and the DA have to justify what you negotiated?
- Does the judge have a history of following sentencing recommendations?

# Negotiations Roadmap

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Before you start

**Why?**

Effective negotiations tips

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# What are your client's goals?

- You don't want to spend all of your time and energy in pursuit of an offer your client will not accept
- Keep in mind that different things matter to different people so what looks like a good offer to you may not look the same to your client
- Be respectful of your client's goals but also be honest with your client about what is a realistic outcome

# Examples

1. Retaining the right to own a firearm
2. Maintaining immigration status
3. A good sentencing recommendation
4. Reducing exposure at sentencing
5. Expungement eligibility
6. Maintaining eligibility for federal student loans
7. Reduce from a felony to misdemeanor or misdemeanor to an ordinance

# Know what's Possible

- Don't spend your time focusing on things you can't change
- Spend time on the issues where you may have success
- Asking for impossible things may affect your relationship with the DA
- Brevity is always a good thing for busy people

# Why Your DA's Personality Matters

- Communicate in the most effective way for your DA
- Communicate in the most effective way for you
- Know what matters to them
- If your DA is lazy then do some of their work for them
  - Don't be afraid to make a proposed offer

# Know your Judge

- Clients assume that judges follow plea agreements, but this may not be true
  - Prepare the client for this possibility
- Anticipate when you may have to justify the negotiations
  - If serious charges are being significantly reduced, the judge may want to know why
  - Don't rely entirely on the DA

# Negotiations Roadmap

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Before you start

Why?

**Effective negotiations tips**

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# Client Control

- Be your client's advocate, but you are also a filter
- You determine what's important to the negotiations. This may be different from what your client believes is important
- Be willing to tell your client what you think is important and what's not
- Convincing your client that the DA's recommendation doesn't matter
  - “no specific recommendation”
  - A bad recommendation

# Be Creative

- Look at the statute books
- Look at your facts
- Do the facts fit another crime?
  - A less serious crime

# Focus on the Facts

- Can the State prove its case?
- Are the witnesses reliable?
- Arguments based on general concepts of fairness may not work
- Your client being a good person matters less than the facts

**Questions???**